

Message Text

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62

ACTION OPIC-12

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R

D. O. 11652: N/A

TAGS : EGEN

SUBJECT : OPIC AGREEMENT

REF : STATE 41319 AND A-946

1) MINISTER OF STATE FOR LEGAL AFFAIRS HUSAIN AL- BAHARNA CALLED CHARGE MARCH 28 TO DISCUSS PROPOSED STANDARD TEXT OF OPIC AGREEMENT. IN GENERAL HE SUGGESTED CHANGES AIMED AT SIMPLIFYING AND MAKING LESS EXPENSIVE CLAIMS AND ARBITRATION PROCEDURES. USING TEXT IN A-9461 BAHARNA PROPOSED FOLLOWIN:

2) PARA 3: TRANSFER LAST SENTENCE TO REVISED PARA 6.

3) PARA 4: BAHARNA ASKED FOR EXPLANATION OF LAST HALF OF SENTENCE BEGINNING QUOTE HOST GOVT SHALL UNQUOTE. HE ASKED WHAT IS IDEA BEHIND THIS WORDING AND WHAT IS MEANT BY QUOTE ANITY UNQUOTE. DOES THIS MEAN A BUHRAIN COMPANY?

4) PARA 5; LINE 4: CHARGE QUOTE FUNDS OF NATIONALS OF USA UNQUOTE TO QUOTE FUNDS OF FOREIGN NATIONALS UNQUOTE.

5) PARA 6(A): (BAHAGNA WOULD LIKE TO REDUCE RELIANCE ON EXPENSIVE INTERNATIONAL ARBITRATION AND MAKE THIS ROUTE LAST RESORT.) HE WOULD LIKE TO DELETE SECOND SENTENCE AND REPLACE WITH LIMITED OFFICIAL USE

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FOLLOWING:

A) QUOTE ANY CLAIM ARISING FROM A DISPUTE BETWEEN THE HOST GOVERNMENT AND AN INVESTOR CONCERNING HIS CONTRACTUAL RIGHTS OR DUTIES UNDER THE PROVISIONS OF THIS AGREEMENT, OR PURSUANT TO IT, SHALL BE SUBMITTED TO THE NATIONAL COURTS OF THE HOST GOVERNMENT FOR SETTLEMENT UNDER THE APPLICABLE LAWS. IN THIS RESPECT, THE HOST GOVERNMENT SHALL ENSURE THAT THE CONTRACTUAL RIGHTS OF AN INVESTOR ARE AFFORDED EFFECTIVE MEANS OF ENFORCEMENT IN CONFORMITY WITH THE APPLICABLE LAW UNQUOTE.

B) QUOTE PROVIDED THAT AN INVESTOR HAS EXHAUSTED THE LOCAL REMEDIES AVAILABLE TO HIM UNDER THE LAWS OF THE HOST GOVERNMENT, THE ISSUING GOVERNMENT SHALL RESERVE ITS RIGHT TO ASSERT, ON BEHALF OF THE SAID INVESTOR, A CLAIM UNDER INTERNATIONAL LAW UNQUOTE.

6) PARA 6(B): (BUHARNA WOULD LIKE CLASSIFY OR CATEGORIZE CLAIMS SO THAT QUOTE ANY CLAIM UNQUOTE CANNOT UPON DEMAND SET INTO MOTION EXPENSIVE PROCEDURE OF INTERNATIONAL ARBITRATION. THEREFORE, HE WOULD LIKE FOLLOWING TO REPLACE 6 (B), 6(C) AND 6(C) (I):

A) PREFERRED TEXT: QUOTE ANY CLAIM AGAINST THE HOST GOVERNMENT ARISING OUT OF THE ACQUISITION OF ANY INVESTMENT, OR INTERESTS THEREOF, FOR WHICH COVERAGE HAS BEEN ISSUED IN ACCORDANCE WITH THIS AGREEMENT WHICH PRESENTS A QUESTION OF INTERNATIONAL LAW, SHALL BE SUBMITTED TO DIRECT NEGOTIATIONS BETWEEN THE TWO GOVERNMENTS. IF WITHIN A REASONABLE PERIOD, THEY ARE UNABLE TO SETTLE THE CLAIM BY AGREEMENT, IT SHALL BE REFERRED FOR FINAL DECISION TO A SOLE ARBITRATOR SELECTED BY MUTUAL AGREEMENT. IF THE GOVERNMENTS ARE UNABLE, WITHIN A PERIOD OF THREE MONTHS, TO AGREE UPON SUCH SELECTION, THE ARBITRATOR SHALL BE ONE WHO MAY BE DESIGNATED BY THE PRESIDENT OF THE I. C. J., AT THE REQUEST OF EITHER PARTY. UNQUOTE.

B) ALTERNATIVE WHICH IS TAKEN FROM AN EXCHANGE OF NOTES BETWEEN USA AND PHILIPPINES ON MUTUAL SECURITY ACT GUARANTIES DATED FEB 19, 1952 (UN TREATY SERIES, VOLUME 177, PAGE 307): QUOTE ANY CLAIM AGAINST THE HOST GOVERNMENT, TO WHICH THE ISSUING GOVERNMENT MAY BE SUBROGATED AS A RESULT OF ANY LIMITED OFFICIAL USE

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INVESTMENT FOR WHICH COVERAGE HAS BEEN ISSUED IN ACCORDANCE

WITH THIS AGREEMENT, WHICH, IN THE OPINION OF THE ISSUING
GOVERNMENT, PRESENTS A QUESTION OF INTERNATIONAL LAW, SHALL
BE SUBMITTED TO DIRECT NETOTIATIONS BETWEEN THE TWO GOVERNMENTS
UNQUOTE. FOLLOWED BY SAME LAST TWO SENTENCES IN (A) ABOVE.

7) BAHRAIN GOVT AGREES IN PRINCIPLE TO PROPOSED AGREEMENT.
CHANGES REQUESTED DO NOT APPEAR TO MODIFY BASIC POINTS OF
AGREEMENT WE WANT, AND IT IS HOPED WE CAN ACCEPT BAHARNA' S
SUGGESTIONS WITHOUT DELAY AND AGREEMENT CAN ENTER INTO FORCE.

STEIN

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*** Current Handling Restrictions *** n/a

*** Current Classification *** LIMITED OFFICIAL USE

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